IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6756 of 2007()

CRIME NO.750/07 OF KAYANKULAM POLICE STATION

PETITIONERS/A2 & A3

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1. RAJAGOPAL, AGED 42 YEARS,
   S/O. KRISHNA KUMARI, GOKULAM, KAPPIL MEKKU,
   KRISHNAPURAM VILLAGE, KAYAMKULAM.

2. KRISHNAKUMARI, AGED 67 YEARS,
   -DO- -DO-

BY ADV. SRI.S.MOHANAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
KAYAMKULAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6756 OF 2007

Dated this the 13th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2 and 3 in a crime registered for offences punishable, inter alia, under Secs.420 and 468 of the IPC. Accused No.2 is the son of Accused No.3. She is the mother of Accused No.1 also. All the three are alleged to be the co-owners of an item of property. The 1st accused had allegedly entered into an agreement for sale of that property. He had received a substantial amount as advance from the de facto complainant. He had also handed over possession of the property to the de facto complainant. It is further alleged that cheques for Rs.50,000/- and Rs.75,000/- were handed over by the de facto complainant to the 1st accused. The 1st accused had allegedly encashed those cheques through his bank account and while

encashing the cheque for Rs.75,000/-, he had allegedly committed forgery and made it to appear that the cheque is for Rs.1.75 lakhs. It is further alleged that prior to the agreement with the de facto complainant, an earlier agreement was entered into by the 1st accused with some other persons for sale of the very same property. The property was not sold. The amount was not returned. It became evident to the de facto complainant that he was being taken for ride. He has approached the civil court. He has also filed a private complaint. That complaint has been referred to the police by the learned Magistrate under Sec.156(3) of the Cr.P.C. Investigation is in progress.

2. The petitioners apprehend imminent arrest. According to them, they have absolutely no role to play in the said agreement between the 1st accused and the de facto complainant. They had not executed any Power-of-Attorney. Two agreements (Annexures A2 and A3) are relied on by the de facto complainant and those agreements do not at all show that the petitioners i.e., A2 and A3 had any role to play in the transaction at all. The agreements were entered into by the 1st accused in his own name and without even claiming that he is the Attorney of accused 2 and 3. Allegedly forged cheque was also encashed by the 1st accused in his own name. In these

circumstances, the petitioners contend that they have absolutely no involvement in the transaction between the 1st accused and the de facto complainant. They are being dragged into this crime with vexatious motive and the attempt is to compel them to yield to unreasonable terms of the de facto complainant and the 1st accused. It is, in these circumstances, prayed that the petitioners may be granted anticipatory bail.

3. The learned Public Prosecutor opposes the application. But requested pointedly to bring to the notice of the court any circumstances which would reveal the contumacious role, if any, played by the petitioners, the learned Public Prosecutor only submits that the police believe that there was collusion between accused 1 to 3. No specific circumstances are brought to my notice to indicate that the petitioners were aware of or had any contumacious role in the transaction in question. The learned Public Prosecutor submits that the 1st accused has relied on an instrument of Power-of-Attorney, the genuineness of which is being investigated into. It is crucial to note that in the two agreements (Annexures-A2 and A3) there is no reference whatsoever to any Power-of-Attorney executed by the petitioners herein. In fact, the recitals in Annexure-3 would go to show that the 1st accused was hurriedly handing over the possession of the

property in question to the de facto complainant for fear that the petitioners herein who were not parties to A2 agreement may not honour the commitments in the said agreement.

4. Having considered all the relevant inputs, I am satisfied that this is an eminently fit case where directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioners. Appropriate conditions can, of course, be imposed to facilitate a fair, efficient and expeditious investigation.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 20/11/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 21/11/07 and 22/11/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to

arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 20/11/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 20/11/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge